

**In The Matter Of:**

*AHERF v.  
PRICEWATERHOUSECOOPERS, LLP*

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**RICHARD WEILL**  
*June 15, 2004*

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**WEILL, RICHARD**



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1 RICHARD WEILL  
 2 company. And -- is that right?  
 3 MS. SPRINGER: Not Lou Lenzi.  
 4 THE WITNESS: Oh, gee. Oh, I'm sorry,  
 5 Ron Wertheim. I apologize. That's a Freudian  
 6 slip.  
 7 Lou was general counsel before Ron.  
 8 And I read the interrogatories last night  
 9 because I remembered Venetia signed them at  
 10 least in part and because these guys said I  
 11 could.  
 12 MR. WITTEN: Who signed them?  
 13 THE WITNESS: They were signed by  
 14 Karleen, but Venetia is a notary, my secretary,  
 15 my administrative assistant.  
 16 BY MR. KRUSKO:  
 17 Q. So Mr. Wertheim is now the general  
 18 counsel of MBIA, is that correct?  
 19 A. Yes, he is.  
 20 Q. What if anything did Mr. Witten say to  
 21 you during this meeting if anything?  
 22 MR. WITTEN: Objection.  
 23 MR. KRUSKO: What's the basis for the  
 24 objection?  
 25 MR. WITTEN: Attorney-client privilege

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1 RICHARD WEILL  
 2 and common trust doctrine, work product as well.  
 3 BY MR. KRUSKO:  
 4 Q. In addition to the responses to the  
 5 contention interrogatories, did you review any  
 6 other document?  
 7 A. No.  
 8 Q. Did you speak with anyone about this  
 9 deposition other than the three individuals you  
 10 mentioned and your spouse?  
 11 A. I told Karleen that I was going to  
 12 have the deposition.  
 13 Q. What if anything did Ms. Strayer say  
 14 in response?  
 15 A. She smiled. Didn't say a word.  
 16 Q. A woman who has been deposed many  
 17 times.  
 18 A. I think I got it all. I think the  
 19 implication was it was going to be a long day  
 20 and I accepted that with a smile back.  
 21 Q. In addition to Ms. Strayer, and  
 22 excepting the people we mentioned before, did  
 23 you discuss your deposition with anyone else?  
 24 A. No.  
 25 Q. Is it your recollection that MBIA

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1 RICHARD WEILL  
 2 provided insurance for fixed rate bonds issued  
 3 by the Delaware Valley Obligated Group in the  
 4 June 1996 timeframe?  
 5 A. Yes.  
 6 Q. Did you understand at the time that  
 7 the Delaware Valley Obligated Group was an  
 8 obligated group that belonged to AHERF?  
 9 A. At the time?  
 10 Q. Yes.  
 11 A. No. Didn't know the deal that  
 12 detailed.  
 13 Q. Is it your understanding sitting here  
 14 today that the DVOG was an affiliate of AHERF?  
 15 A. Yes.  
 16 Q. Is it your recollection that MBIA had  
 17 first provided insurance for bonds issued but an  
 18 AHERF affiliate in 1989?  
 19 A. I wouldn't have known that then.  
 20 Q. Do you know that now?  
 21 A. Yes.  
 22 (Exhibit 2618, Document Bates Stamped  
 23 MBIA 051300 through 316, marked for  
 24 identification)  
 25 BY MR. KRUSKO:

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1 RICHARD WEILL  
 2 Q. If I could show you what we have just  
 3 marked as Exhibit 2618.  
 4 For the record, I would note that  
 5 Exhibit 2618 is Bates Numbered MBIA 051300  
 6 through MBIA 051316.  
 7 Mr. Weill, do you recognize any of  
 8 these pages?  
 9 A. Sure. They are the -- I don't  
 10 recognize -- I would hate to be nitpicky. I  
 11 mean, just looking at them, it is a MBIA  
 12 financial guarantee insurance policy for the  
 13 DVOG deal and the surety bond policy.  
 14 Q. I should make clear you recognize the  
 15 form of this exhibit?  
 16 A. Yes, of course.  
 17 Q. Do you recognize MBIA 051300 through  
 18 304 as relating to the series A bonds issued by  
 19 the DVOG?  
 20 A. Only by looking at the document, yes.  
 21 Q. What is the purpose of the financial  
 22 guarantee? Or what is the purpose of a  
 23 financial guarantee insurance policy executed by  
 24 MBIA?  
 25 A. We insure principal and interest for

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1 RICHARD WEILL  
2 the benefit of the holder of the bond in the  
3 event that those monies are not deposited with  
4 the trustee or paying agent of the deal.  
5 Q. Do you recognize pages 051305 through  
6 309 as the insurance policy applying to series B  
7 of the DVOG bonds?  
8 A. Only because it says so on its face,  
9 but the answer is yes.  
10 Q. Do you recognize page 051350 through  
11 051312 as applying to series C of the DVOG  
12 bonds?  
13 A. Says so on its face, yes.  
14 Q. Can you turn with me to page 051315?  
15 A. Sure. I am there.  
16 Q. Do you see the subparagraph number two  
17 about three quarters of the way down?  
18 A. Sure.  
19 Q. Do you see the reference to premium in  
20 the amount of \$6,257,000?  
21 A. Yes, I do.  
22 Q. Did you understand that to be the  
23 amount of money that MBIA was paid to provide  
24 insurance for the DVOG series A through C bonds?  
25 A. Yes. And the surety bond as well as

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1 RICHARD WEILL  
2 the insurance policy, remember they are  
3 different, but yes is the answer.  
4 Q. Thank you. Are you aware of any other  
5 compensation that MBIA received in exchange for  
6 the insurance and surety bonds?  
7 A. No.  
8 (Exhibit 2619, Document Bates Stamped  
9 MBIA 051333 through 352, marked for  
10 identification)  
11 BY MR. KRUSKO:  
12 Q. If I can show you what we have just  
13 marked as Exhibit 2619, Mr. Weill, do you  
14 recognize the form of any of the documents that  
15 encompass Exhibit 2619?  
16 A. By the title of the documents, I know  
17 what the documents are generally, if that's the  
18 answer to the question that you are looking for.  
19 Q. Do you recognize pages 051333 through  
20 051339?  
21 A. I don't mean to parse words with you,  
22 I really don't. I don't know what the word  
23 "recognize" in that sentence means.  
24 Q. I apologize. Do you recognize the  
25 form of document that encompasses those pages?

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1 RICHARD WEILL  
2 A. You mean have I seen a financial  
3 guarantee agreement before, is that the  
4 question?  
5 Q. Yes.  
6 A. Okay. The answer is I probably have  
7 seen financial guarantee agreements before, yes.  
8 Q. What is your understanding in brief  
9 and general terms as to the functions of a  
10 financial guarantee agreement?  
11 A. They are additional understandings  
12 between, in this case, because I can read the  
13 document, the obligor and MBIA. But they are  
14 different. This is a financial guarantee  
15 agreement between the issuer and the insurer --  
16 between the obligor and the insurer, I'm sorry.  
17 Q. How does a financial guarantee  
18 agreement differ from a financial guarantee  
19 insurance policy?  
20 A. Well, the policy is attached in some  
21 fashion, not literally any more, but it used to  
22 be literally to the bond and it runs with the  
23 bond and anyone who owns the bond gets the  
24 benefit of the insurance policy.  
25 In its form it is very, very simple.

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1 RICHARD WEILL  
2 It merely says that we will pay principal and  
3 interest when due to the degree that the money  
4 isn't at the trustee's office.  
5 A financial guarantee agreement is a  
6 more crafted document that is the understanding  
7 between, in this case the obligor and the  
8 insurer, and is more specific. The insurance  
9 policy is actually filed -- is a form filed with  
10 the State of New York. Actually it is filed  
11 with a lot of states, but filed with the State  
12 of New York for sure.  
13 (Exhibit 2620, Document Bates Stamped  
14 MBIA 051353 through 372, marked for  
15 identification)  
16 (Exhibit 2621, Document Bates Stamped  
17 MBIA 051373 through 392, marked for  
18 identification)  
19 BY MR. KRUSKO:  
20 Q. If I could also show you what we have  
21 marked as Exhibit 2620 and Exhibit 2621.  
22 MR. WITTEN: What is the Bates number  
23 range for 2620?  
24 MR. KRUSKO: I was just going to read  
25 it into the record. MBIA 051353 through 051372.

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Q. Are you aware of any instance in your time at MBIA in which MBIA accelerated the debt of a healthcare entity?

A. No, we have never done that, but we have never come even close to this kind of a situation, so the answer is no. There isn't a comparable situation of this kind of cover breach of this kind of situation.

And going back to your point, I believe that these paragraphs were written in time. You must know when this was written. I assume you know when this was written. Was this written after the statements, the financial statements were redone or before? The question that I would want to know before I would accept every sentence in here as being perfectly accurate.

In other words, if in fact this is based on the financial statements that were given to IPM when he wrote this, that would be one answer. If these were based on financial statements that were later redone that would have reflected different facts, I am sure he would have written a different paper. You would

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issuer and insurer of consultants to cure rate covenant violations is a structure which we would strongly prefer to work with in future workouts."

Do you see that?

A. Yes, I do.

Q. So that reflects a recommendation by Mr. Stevens and Mr. Mathis as to how bond covenants should be written in the future?

A. It is their opinion of something that we should try to get into deals, yes.

Q. So is it your understanding, then, that had the DVOG violated the debt service coverage ratio, the DVOG alone had the ability to bring in a consultant of its own choosing?

A. I believe that's what the document said.

Q. MBIA could have done nothing under the master trust indenture to stop the DVOG from doing so, correct?

A. Well, the answer to your question is -- let's divide the question into parts so that we answer it fairly.

You have come up with the correct

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need to know when this was written and when the restated financial statements were given to Mr. Stevens and Mr. Mathis to put this in historic perspective.

Q. Does MBIA have the power to accelerate the debt it assumed that had been issued on behalf of Sacred Heart Hospital?

A. I don't remember.

Q. Do you recall whether MBIA investigated that possibility?

A. I don't remember.

Q. Mr. Stevens and Mr. Mathis continue: "A rate covenant failure between 1.0 and 1.2 times coverage allowed for the retention of a consultant chosen solely by management."

Do you see that sentence?

A. Yes, I do.

Q. They continue in the next paragraph: "This effectively excluded the use of consultants like the Hunter Group or Quorum which IPM generally favors. Giving exclusive control of the selection of consultants to creditors may breach lender liability guidelines, but requiring the consent of both

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legal answer, you haven't come up with what happens in the real world. In the real world if you understand how bad a situation is, you have the capacity to talk with both management and, frankly, ultimately the trustees and point out to them the difficulty of the situation.

I can point to other situations in David Stevens and Pat Mathis' regime in which they found, not in a hospital, but they found covenant violations that allowed for a call in and it was exclusively held by the issuer -- I am using the word -- or obligor, whatever word you want to use, the issuer -- and the issuer wanted to pick someone who we didn't think was a very good choice, we persuaded either the management, and in two cases we actually persuaded the board to pick who we thought should be picked, and in fact because of the situation, that management was actually not accepted going forward.

Now, so I am telling you that although he is correct in what he says, if we had known of the violation we could have used other means available to us to persuade AHERF, trustees or

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1 RICHARD WEILL  
 2 management to choose a consultant that we  
 3 thought was appropriate.  
 4 Q. What other means are those?  
 5 A. My experience is that the people that  
 6 act as trustees of these institutions, the  
 7 difference between a nonprofit and a profit is  
 8 that the people who do these things, if they  
 9 knew the facts and are given the facts to them  
 10 by someone they trust, listen and attempt to do  
 11 the right things.  
 12 If they don't have the facts and they  
 13 are not able to have someone talk to them  
 14 directly, then unfortunately they often don't  
 15 have the ability or the time or the energy or,  
 16 frankly, in some cases they are lazy, to delve  
 17 deeply into the facts.  
 18 But if we had known the facts, we  
 19 would have done what we did in other  
 20 circumstances which is to talk to the  
 21 directors -- the trustees directly and point out  
 22 to them what the management was doing and what  
 23 we thought was wrong.  
 24 Q. Is it your recollection that for some  
 25 months prior to the bankruptcy filing MBIA had

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1 RICHARD WEILL  
 2 the MBIA internal ranking?  
 3 A. That's correct.  
 4 Q. Is it your belief that at this point  
 5 in time going forward MBIA was advocating that  
 6 AHERF retain a consultant?  
 7 A. I don't know the time table in which  
 8 those things were done.  
 9 Q. Is it your recollection more  
 10 generally, though, that MBIA was not successful  
 11 in urging AHERF to retain a consultant?  
 12 A. You know, my recollection, and again,  
 13 this is solely -- I don't want you to believe  
 14 that I am saying this as some sort of fact.  
 15 My recollection was that they actually  
 16 did retain a consultant, and they may not have  
 17 followed the advice of the consultant, but my  
 18 recollection was that AHERF did retain a  
 19 consultant, and I think they even retained one  
 20 of the two companies that we thought was  
 21 desirous. But I am not going to tell you that I  
 22 know that for sure.  
 23 Q. I am told we should change the tapes  
 24 so let's go off the record.  
 25 THE VIDEOGRAPHER: Going off the

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1 RICHARD WEILL  
 2 urged AHERF to retain a turn-around consultant?  
 3 A. Yes.  
 4 Q. Is it also correct that AHERF up until  
 5 July 1998 refused to retain such a consultant as  
 6 urged by MBIA?  
 7 A. I don't know that. I don't know that.  
 8 Q. If I can show you what we have marked  
 9 as Exhibit 2201?  
 10 A. Sure.  
 11 Q. Mr. Weill do you recognize Exhibit  
 12 2201 as a February 3rd, 1998 downgrade  
 13 announcement placing the DVOG on credit watch  
 14 list B?  
 15 A. Yes.  
 16 Q. Here MBIA has rated the DVOG as an 8B  
 17 credit, correct?  
 18 A. That's correct.  
 19 Q. So separate and apart from the  
 20 classified list, the only other lower rating  
 21 would be an 8 C, correct?  
 22 A. I'm not sure there was a significant  
 23 difference between 8 B and 8 C. Yes, it is  
 24 serious.  
 25 Q. So this is basically rock bottom of

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1 RICHARD WEILL  
 2 record at 1:03 p.m.  
 3 (Recess)  
 4 THE VIDEOGRAPHER: Beginning tape  
 5 number three and returning to the record at 1:09  
 6 from 1:03.  
 7 BY MR. KRUSKO:  
 8 Q. Mr. Weill, let me show you what has  
 9 been previously marked as 2197.  
 10 A. This is the same -- this is the  
 11 fidelity document, right?  
 12 Q. Yes.  
 13 A. Okay. I am not supposed to ask you a  
 14 question, I guess.  
 15 Q. Exhibit 2197 consists of talking  
 16 points that Mr. Stevens and Ms. Strayer have  
 17 drafted for you dated July 23rd, 1998. If you  
 18 turn with me to the second page of the document,  
 19 you will see a time line with subheading AHERF  
 20 actions, do you see that?  
 21 If you turn with me to the fourth page  
 22 of the document, 030074, here begins a time line  
 23 of MBIA actions, correct?  
 24 A. That's what it says, yes.  
 25 Q. Towards the very bottom you will see a



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Q. Had you met with David McConnell?

A. No.

Q. Had you met with any member of AHERF management?

A. No.

Q. Do you recall discussing with Mr. Stevens any meeting that he might have had with AHERF board members?

A. I don't recall that David Stevens had a conversation with AHERF board members but I could be wrong. No, I don't recall David telling me that he had conversations with an AHERF board member, trustee.

Q. I take it prior to June 25, 1998, Mr. Stevens had been very involved in remediation efforts with the DVOG?

A. I think that's correct, yes. I mean, "vary" is a funny word, but he was involved. Very day to day -- he was involved, yes. I think Mathis and -- I think Karleen and Pat were doing it all -- more of the detail work, but David was involved.

Q. I take it, though, in the calendar 1998 timeframe leading up to June 25, 1998, Mr.

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said yes to that. That wasn't our understanding.

He did give me information. I suspect that there was information that happened in the course of his job, maybe not course of AHERF, in which he chose not to give me some information that maybe I would have found desirous. But, my gosh, we didn't talk 24 hours a day, we talked for a few minutes each day and he gave me what he thought was the most relevant information and the most important information.

Q. In response to this memorandum, Exhibit 1894, did you contact any member of AHERF's board to try to gain an understanding as to the perspective of the AHERF board?

A. I did not.

Q. Did you direct anyone to?

A. I don't think I directed anybody to either. This was a communication that we were going to have with someone. This conversation was not with a board member, this was with an officer of the company.

Q. Show you what was previously marked as Exhibit 1898.

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RICHARD WEILL

Stevens was the senior most individual at MBIA working on the DVOG remediation?

A. Yes.

Q. I take it you had faith in Mr. Stevens' judgment?

A. Yes, I did.

Q. I take it you were relying on him for advice and counsel as to what MBIA should do with respect to the DVOG?

A. He was the officer in charge and I had a great deal of faith in him. In addition, I had a good relationship with him so that I felt, and I guess I still feel, that David and I talked about things often enough, deep enough that he had whatever input I could help, whatever assistance I could give to him at any time that he needed it.

Q. You have no reason to believe that based on your interactions with Mr. Stevens, he at any point kept any information from you that you should have known?

A. My relationship with David Stevens was such that I don't think if you had asked him if he had to give me any information he would have

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RICHARD WEILL

A. Oh, I know this one. No, I don't know this one. I thought it was my letter. Okay.

Q. Mr. Weill, if you would just take a moment with the first two pages of Exhibit 1898, I would just like to know whether you recall seeing this letter at any point in time?

(Pause)

A. I do not specifically recall seeing this letter. However, I could have.

Q. Do you believe that you saw it and approved Mr. Stevens signing this letter?

A. He told me what the proposal was going to be and I am sure we generally talked about this letter. I may have even seen a draft of this letter, that would not have been that unusual in that time period. But I don't think that I specifically told him you can go ahead and sign the letter.

Q. In the proposal that you have alluded to was a joint proposal by MBIA and PNC to lend AHERF up to 160 million, is that correct?

A. That's correct.

Q. 50 million was going to be available to AHERF up through August 15, 1998?

53 (Pages 206 to 209)

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RICHARD WEILL

A. That's what it says, yes.

Q. Is it your recollection that the loan was to be made to AHERF and its western entities which in turn would provide collateral for the loan?

A. I have no recollection. Sorry.

Q. If I can direct your attention to the second paragraph of the first page, just skim that and let me know whether that refreshes your memory at all?

A. It won't refresh my recollection, it only tells me that's what the proposal was.

Q. Okay.

A. Yes, that's what the letter says the proposal was.

Q. That's consistent with your recollection?

A. Absolutely.

Q. As to MBIA's --

A. General position.

Q. -- general position on this issue?

A. Yes, perfect.

Q. I take it similar to the earlier proposal that we saw, MBIA made this proposal

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I assume the AHERF board rejected this proposal. It didn't go through. But I can't even tell you with certainty that the board did that. I don't know who rejected it. It didn't occur.

It was transmitted, I do know that.

Q. More generally, is it your recollection that the AHERF board was very reluctant to pledge assets of AHERF's western affiliates to support AHERF's eastern affiliates?

A. That's what we were told, that's correct. I don't know that.

Q. Told by whom?

A. By personnel at AHERF.

Q. By who?

A. I don't know, but I assume whoever we were talking about to. I don't know a name.

Q. Did you follow up with the board to try to change anyone's mind in that regard?

A. I don't know if we did or not.

Q. You used the plural pronoun. I am asking you --

A. I did not.

Q. Did you direct anyone to?

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because at the time it thought that the bankruptcy filing could be avoided if the DVOG received this additional influx of liquidity?

A. And support from the western entities, yes, is the answer, with the addition.

Q. Was MBIA's position in any way influenced by comments or feedback from any outside party or consultant retained by MBIA?

A. The answer is I don't know because David and I were talking about this. He may well retained outside consultants. In fact, my recollection is that he did and they may have been giving him advice. It was not David's style, however, to accept outside consultants' advice without thinking it through and coming to a totally independent decision.

So I doubt if any outside consultant told David what to think. They may have taken a similar position, they may have advised him, they may have given him an opinion, but David formed his own opinions.

Q. Is it your recollection that the AHERF board rejected this proposal?

A. You know, I don't know what happened.

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A. Again, I doubt if I directed anyone to do that. I am sure we talked about it but I didn't direct anyone to do that. We had to do -- we talked through what the options were and it may well have been that we didn't have good access to those people. You have to have good access.

Q. Good access to the board?

A. Yes. I mean, good access means some sort of relationship.

Q. It is your recollection that MBIA did not have a relationship with the AHERF board?

A. We did not have a strong independent relationship with the AHERF board.

Q. Did you do anything to try to improve MBIA's relationship with the AHERF board?

A. I am sure that if I went through -- that if I talked with everybody, I would find that we tried very hard to do that.

Q. Sitting here today what --

A. I don't know what we did.

Q. Sitting here today, did you do anything --

A. No.

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1 RICHARD WEILL  
 2 Mr. Sanza who was then president and CEO of  
 3 AHERF would circulate it to the AHERF board?  
 4 A. That was what we were hoping for, yes.  
 5 Q. Hoping for or was that your  
 6 understanding, sir?  
 7 A. Understanding. I would have no way of  
 8 knowing what he would do. We hoped that he  
 9 would -- when you send a letter like this to an  
 10 officer, you don't know for sure that he will  
 11 circulate it. Our hope was that he would  
 12 circulate it, but we had no other way -- this is  
 13 the way to contact him.  
 14 Q. So why didn't MBIA take whatever steps  
 15 necessary to contact each AHERF board member  
 16 with this proposal?  
 17 A. I suspect that we wanted to get this  
 18 letter out quickly. I suspect that Tony may  
 19 have told us that he was going to circulate it  
 20 for us to the board. All those things were  
 21 probably in the suspect, but I can't tell you  
 22 with certainty that it was circulated to the  
 23 AHERF board. It wasn't sent to him, it was sent  
 24 care of.  
 25 Q. Do you recall whether prior to this

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1 RICHARD WEILL  
 2 point in time July 11, 1998, MBIA had sent any  
 3 other appeal or correspondence to the AHERF  
 4 board?  
 5 A. It says that we sent one right here on  
 6 July 7. You just showed it to me.  
 7 Q. The David Cook letter?  
 8 A. Right.  
 9 Q. Signed by Mr. Stevens?  
 10 A. Yes.  
 11 Q. Yes. I apologize. In addition to  
 12 that piece of correspondence do you recall --  
 13 A. I don't recall any other.  
 14 Q. You don't recall you personally  
 15 sending any correspondence to the AHERF board?  
 16 A. I do not recall.  
 17 Q. By this point in time had MBIA  
 18 retained Goldman Sachs to assist it in --  
 19 A. It is my recollection that we had.  
 20 Q. Third paragraph, the opening sentence,  
 21 appears the statement: "Our advisors indicate  
 22 that the sale of the entire system would very  
 23 likely yield a purchase price well in excess of  
 24 all debt."  
 25 Do you see that statement?

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1 RICHARD WEILL  
 2 A. Yes, I do.  
 3 Q. Is that based on advice from the  
 4 investment banking firm Goldman Sachs?  
 5 A. I can't say that with certainty but I  
 6 sure think that's what it means, yes.  
 7 Q. I take it you believed that at the  
 8 time?  
 9 A. Absolutely.  
 10 Q. I take it you wanted to send this  
 11 letter to the board to build pressure on the  
 12 board to keep AHERF and the DVOG out of  
 13 bankruptcy?  
 14 A. Absolutely.  
 15 Q. Did you ever learn that a subcommittee  
 16 of the AHERF parent board met at some point in  
 17 time to consider this proposal?  
 18 A. I don't -- no, I do not know that.  
 19 Q. Do you recall that the AHERF board  
 20 rejected this proposal?  
 21 A. I don't recall that either.  
 22 Q. Do you recall that the AHERF board  
 23 failed to act on this proposal?  
 24 A. That's a certainty, yes, I mean that's  
 25 just a fact.

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1 RICHARD WEILL  
 2 Q. Were you disappointed by that?  
 3 A. Yes.  
 4 Q. I take it you were disappointed by  
 5 that because you felt that selling the entire  
 6 system would avoid the need for a bankruptcy  
 7 filing?  
 8 A. You know, that's exactly how I felt on  
 9 that day, that is exactly correct.  
 10 Q. Do you recall at a later point in time  
 11 making another offer of financial assistance to  
 12 AHERF?  
 13 A. Yes.  
 14 Q. Do you recall roughly what was  
 15 entailed with that offer?  
 16 A. I couldn't do it from memory, no, but  
 17 I do know we made another offer. Or they asked  
 18 us -- they asked us for an offer and we must  
 19 have made a counteroffer is my recollection. It  
 20 had to do with liquidity rather than this kind  
 21 of letter. It was a different proposal.  
 22 Q. So in other words, it was a proposal  
 23 for financial assistance as opposed to a  
 24 proposal to sell --  
 25 A. My recollection, that's my

56 (Pages 218 to 221)



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RICHARD WEILL

1 recollection.

2 Q. If I can show you what we previously  
3 marked as Exhibit 1243?

4 A. July 13. Okay.

5 Q. Mr. Weill, does Exhibit 1243 embody  
6 the liquidity proposal that you had in mind? Or  
7 does it reflect --

8 A. You know, it is interesting. That  
9 isn't my -- I am sure that it does, but I don't  
10 recall it at thirty -- it must be. My  
11 recollection was that it was a smaller amount.  
12 I could be wrong. Remember, I didn't go back  
13 and look at anything so I can't help you  
14 exactly, but that's -- you know, this is the  
15 letter that was sent. It says that MBIA is  
16 involved in this offer so this must be the offer  
17 that we made on July 13.

18 Q. This joint offer contains no  
19 requirement for a pledge of assets held by  
20 AHERF's western affiliates, correct?

21 A. I don't know. I would have to read it  
22 because I don't know the offer.

23 Q. Okay.

24 A. So the answer is I don't know.  
25

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1 Q. More generally, do you recall whether  
2 in this timeframe MBIA was willing to lend the  
3 DVOG a small amount of money without requiring a  
4 pledge of assets from AHERF's western entities?

5 A. Yes, it is my recollection that we  
6 were willing. One of the problems that I have  
7 not repeated every single time because I am  
8 trying to be a gentleman about this whole thing,  
9 is that people were working from information  
10 that turned out to be totally faulty.

11 Everybody was working from financial  
12 statements that turned out not to represent -- I  
13 am not calling them fraudulent, but I am calling  
14 them inaccurate. So all the information that  
15 everybody is working on at this time, all of  
16 this may have been a waste because in fact we  
17 didn't have the correct information as to the  
18 financial situation of any of these  
19 institutions. We may have been throwing money  
20 down a rat hole at this point.

21 So these were honest attempts by us to  
22 try to -- to help the situation. Yes is the  
23 answer to your question.

24 Q. Is it also correct that you don't  
25

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1 recall reviewing or relying on the audited  
2 fiscal year 1997 financial statements for AHERF?

3 A. They weren't available on July -- for  
4 '97? The '96s come out in June of -- well, of  
5 course we would have relied on financial  
6 statements. We looked at this credit and we  
7 looked at the financial statements that were  
8 delivered to us.

9 Q. Did you personally to the best of your  
10 recollection review the audited FY '97 financial  
11 statements --

12 A. I did not.

13 Q. -- for AHERF or any of its affiliates?

14 A. I did not.

15 Q. And you don't recall, then, relying on  
16 those statements for making any decision?

17 A. Yes. Implicit in all of the  
18 discussions that we had at MBIA was a belief  
19 that the information that we were receiving was  
20 accurate and correct, that there weren't any  
21 misstatements in it. It is how you make  
22 decisions. You don't go around and say I am  
23 assuming the accuracy of these financial  
24 statements that are delivered to me.  
25

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1 What you do is, in the real world, is  
2 you take a statement that's delivered to you,  
3 you read it and you believe it. Then you say --  
4 you prepare a report like Dick Heberton's report  
5 that describes what was in the income statement  
6 that was delivered to you.

7 Just putting it in perspective, the  
8 board didn't have the information either when  
9 they rejected these offers.

10 Q. How do you know that, sir?

11 A. Because the statements subsequently  
12 were restated by the auditors.

13 Q. So by the information, what do you  
14 mean the information?

15 A. Correct financial information was not  
16 available. I am assuming that no auditing firm  
17 restates financial statements if they were  
18 correct when issued. You only restate financial  
19 statements when they are incorrect.

20 Q. Do you have any basis for concluding  
21 that the AHERF board would have done anything  
22 different?

23 A. No basis.

24 Q. Had --  
25

57 (Pages 222 to 225)

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A. I have no basis for knowing that. However, let's be fair. Having correct information makes decisions more -- correct decisions to be made easier to make. No one tries to make decisions from false information, from fraudulent information.

And I haven't done this for every question because I didn't think it was fair to you, but inherent in this is that the financial statements were restated.

Q. Okay. So why are they fraudulent?

MR. WITTEN: Let him finish if he is answering a question.

A. I didn't say they were fraudulent, I don't know that.

Q. Just to be clear, you have no basis for saying that the audited fiscal year 1997 consolidated statements for AHERF and its affiliates are in any way fraudulent?

A. I didn't say that any of them were fraudulent. I said that a number of them were restated which means they were incorrect when delivered. I don't know if they were fraudulent. That's a legal issue.

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MR. WITTEN: Why don't we go off the record.

THE VIDEOGRAPHER: Going off the record at 2:08 p.m.

(Recess)

THE VIDEOGRAPHER: Returning to the record at 2:22 from 2:08.

(Exhibit 2626, Document Bates Stamped MBIA 030141 through 030142, marked for identification)

BY MR. KRUSKO:

Q. Welcome back. Let me show you what we just marked as Exhibit 2626.

A. Why didn't we date anything in those days?

(Pause)

A. Okay.

Q. Do you recognize Exhibit 2626, Mr. Weill?

A. No.

Q. I should back up one second.

For the record, Exhibit 2626 is Bates numbered MBIA 030141 through 030142.

Is it your belief that Mr. Stevens has

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prepared this document for you to use in addressing a letter to the MBIA board concerning AHERF and/or the DVOG?

A. I don't know what the purpose of this memorandum was, I'm sorry. I don't remember.

Q. Did Mr. Stevens at any point in time draft information for you to include in a letter that you in turn submitted to the MBIA board?

A. Not within my recollection, I'm sorry. I don't recall sending a letter to the board. But it says if you would -- says board letter paragraphs for DVOG.

Q. Right?

A. But I don't recall it.

Q. Okay.

A. By the way, it may not have been sent, too. I may have asked for information for a letter. I may have even drafted the letter and may have concluded at some point to do it orally or to do it differently. But clearly this was done, at least he thought he was writing a letter for the board.

Q. In your capacity as president, do you recall instances in which you submitted a letter

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to the MBIA board or otherwise briefed the board?

A. I briefed them orally. I don't -- this was such a large issue that it is conceivable that we would have written them a letter, but historically even to this day that isn't how we communicate with the board.

Q. If you would turn with me to the second page of the document, specifically the second full paragraph, begins "up to the date," do you see that?

Here Mr. Stevens has written that up to the date of bankruptcy filings as he has testified to earlier, the DVOG did not breach a legal covenant, correct?

A. That's what it says.

Q. That's consistent with your recollection, correct?

A. That's what he told me, that's correct. By the way, again, just for the record, it did not on the basis of the information that we had, violate a legal covenant. Maybe if we had different information it would have.

58 (Pages 226 to 229)

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to which some of the obligations that MBIA had with respect to the DVOG had been ceded pursuant to some treaties that had been entered?

A. Before that.

Q. Prior to the DVOG bond offering?

A. Right. As an annual treaty, it was part of an annual treaty. I am just guessing but I am almost sure I am right.

Q. In the 1996 timeframe did you have any responsibilities with respect to the reinsurance treaties that MBIA entered into?

A. No.

Q. Do you recall dealing with anybody over at Capital Re regarding the DVOG at any point in time?

A. No.

Q. Do you recall participating in a meeting with Capital Re in October 1998?

A. I don't recall participating in this meeting.

Q. Does Exhibit 2627 appear to you to be a handout that MBIA generated in connection with a meeting with Capital Re in October 1999?

A. Yes.

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Q. If you turn with me to page 0461, the second page of the document, do you see here the subheading DVOG history?

A. Yes.

Q. The third bullet states: DVOG was considered an acceptable for the credit by MBIA based on cash, 308 million in the west, and at the parent, strong operating history of the Pittsburgh affiliates offsetting DVOG's limited liquidity to an eight days cash on hand and high leverage, 75 percent debt to cap. DVOG received investment grade shadow ratings.

Do you see those statements?

A. I sure do.

Q. I take it you agree with those statements?

A. Actually I can't possibly agree with them, because now it says 28 days and before it said 32 or 54, so it is, again, different analysts looking at different things differently.

But I think what he was -- I think the person that was trying to set this up was trying to explain in that person's perspective why we

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insured this deal.

Q. In general terms, it was true, was it not, that the DVOG had limited liquidity at the time MBIA provided a financial guarantee?

A. Yes.

Q. It is true that the DVOG had a high leverage as measured by a debt to capitalization ratio?

A. That's correct.

Q. Is it also true, though, that MBIA was encouraged by the amount of cash in the west and at the parent entity?

A. It appears that that's what this says. I don't know if we were. You have to read the underwriting documents to draw that conclusion. I suspect that this document was not written by someone either in new business underwriting or IPM. I believe this document was probably written by someone in finance, just guessing.

Q. But you have no reason to know one way or the other --

A. I have no reason to know one way or the other --

Q. -- the author of this document?

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A. I don't know who the author of the document is. I don't know whose handwriting that is on the side, although I think I could guess.

Q. Whose handwriting do you think that is?

A. I think that it is -- it isn't David Stevens, I think it is Judy Radasch. But I don't know that for sure.

Q. The handwriting on page 0461 --

A. 461.

Q. -- the same page you were just on, the second page of the document, appears to state the AHERF CFO stated that west would support east, and then in quotations appears the statement "moral commitment"?

A. That's what it says.

By the way, you didn't read a key part of the sentence. It says DVOG received investment grade shadow ratings, so as weak as the credit was, it received investment grade ratings.

Q. I am virtually positive I read that into the record, but the document speaks for

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 2 itself.  
 3 If you turn with me to page 0466?  
 4 A. 66? I am there.  
 5 Q. Do you see the third bullet which  
 6 states: New CEO Sanzo hires Hunter Group" --  
 7 A. What page?  
 8 Q. 0466?  
 9 A. I am there.  
 10 Q. Are you there? Third bullet: "New  
 11 CEO Sanzo hires Hunter Group (later we  
 12 discovered that Hunter scope was extremely  
 13 limited). "  
 14 Do you see that?  
 15 A. I do.  
 16 Q. And the heading here is April to July  
 17 '98 heating up, do you see that?  
 18 A. Yes, I do.  
 19 Q. Now, this passage reflects the fact  
 20 that AHERF hired the Hunter Group for a project  
 21 that was more limited in scope than MBIA would  
 22 have liked to have seen the Hunter Group  
 23 perform, correct?  
 24 A. That's what it says.  
 25 Q. Is that consistent with your

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 2 recollection?  
 3 A. Yes.  
 4 Q. Is it also correct to say that MBIA  
 5 was powerless to influence AHERF to determine  
 6 the scope of the project that the Hunter Group  
 7 was retained for?  
 8 A. "Powerless" is too strong. We did not  
 9 have the power to cause them to do something.  
 10 We only had suasion, we didn't -- but powerless  
 11 would imply that you couldn't do anything. I  
 12 think we tried to persuade them.  
 13 Q. But short of persuading AHERF, did  
 14 nobody have any legal right to determine in part  
 15 or in whole the scope of the retention of the  
 16 Hunter Group by AHERF?  
 17 A. Because the violation was not -- the  
 18 violations that the financial statements showed  
 19 were not severe enough to allow us to really  
 20 assert all of our rights. The answer to your  
 21 question is yes. Had the financial statements  
 22 been as later Coopers & Lybrand believed they  
 23 should have been when they restated them, we  
 24 would have had the power to accelerate and that  
 25 might have been the vehicle for suasion to get

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 2 the Hunter Group to have more authority.  
 3 Q. But that's just speculation on your  
 4 part, correct?  
 5 MR. WITTEN: Objection.  
 6 A. Well, it is not -- we would have had  
 7 more power, we would have had -- it is not  
 8 speculation that we would have had more power.  
 9 Q. But when you say that might have been  
 10 the vehicle for suasion to get the Hunter Group  
 11 to have more authority?  
 12 A. Yes.  
 13 Q. That is speculation on your part?  
 14 A. Well, it is not speculation.  
 15 MR. WITTEN: Objection.  
 16 A. It is an opinion of what more power  
 17 would have gotten you. Speculation -- I guess  
 18 speculation means something that you are not  
 19 attributing. The word "speculation" just means  
 20 guessing out of whole cloth, not what is more  
 21 logical. Speculation is just a guess.  
 22 Here I am saying that if the facts  
 23 were as they were subsequently -- and I am  
 24 taking the facts as they were subsequently  
 25 because Coopers & Lybrand issued new

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 2 statement -- those statements would have given  
 3 us more power.  
 4 Q. What is your opinion as to the  
 5 likelihood that MBIA would have accelerated the  
 6 DVOG bonds?  
 7 MS. SPRINGER: Can you say what time  
 8 period you are talking about now again?  
 9 BY MR. KRUSKO:  
 10 Q. In the event of a covenant violation  
 11 in fiscal year 1997.  
 12 A. Since I am allowed to have a view, my  
 13 view is that had we had that information, we  
 14 would have threatened to accelerate the bonds.  
 15 And the board, seeing that that covenant was  
 16 breached and that power was in the hands of  
 17 creditors, would have gotten more involved, made  
 18 more changes quicker than they did.  
 19 That's just -- but that would be the  
 20 logical result of what happened in other similar  
 21 situations. That's how people act.  
 22 Q. Why did MBIA not then acceleration  
 23 when the DVOG was placed on credit watch list B  
 24 in February 1998?  
 25 MR. WITTEN: Objection.



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A. I don't think it had the power to. I don't think it breached a covenant that allowed us to do that. I told you we don't threaten to do things we can't legally do.

Q. Did MBIA to the best of your knowledge ever communicate to AHERF that had there been a covenant violation in fiscal year 1997, it would have accelerated the bonds?

A. Of course not. That would have been -- that would be -- no one at MBIA knew until the restatement that there was a covenant violation. We believed the financial statements.

Q. Is it correct that at some point in time prior to the bankruptcy filing AHERF representatives alerted MBIA to the fact that in all likelihood at the end of fiscal year 1998 --

A. Yes.

Q. -- there was going to be a covenant violation at the DVOG?

A. That's absolutely correct. But that doesn't give you the power. You got to understand -- I want to finish the answer.

You have got to understand, someone

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would have examined all of our rights just as we had done in lots of other situations, which I am more than willing to recall for you what we have done in other situations, and we would have examined all the alternatives.

Q. But it is your testimony that upon hearing that there was going to be a covenant violation at the end of fiscal year 1998, you had no lists of options in mind as to what MBIA would do?

MR. WITTEN: Objection.

A. First of all, the option I had in mind was to check with legal counsel to see what we could go when it occurred. We wouldn't --

Q. What you could do pursuant to the master trust indenture?

A. Absolutely.

Q. Did you ever take that step?

A. No, we never got those financial statements before bankruptcy was filed.

Q. Is it your recollection that AHERF in early September 1998 announced that no further reliance should be placed on its fiscal year 1997 consolidated audited financial statements?

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telling you that something is going to happen, you don't have it until you have the financial statements.

Q. Do you recall roughly when you learned of that projection or prediction?

A. No.

Q. What was your response once you heard that?

A. Concern.

Q. Did you formulate any written or formal plan as to what MBIA would do if that covenant was violated at the end of fiscal year 1998?

A. Not to my knowledge.

Q. Did anyone else at your direction?

A. I'm sorry, "not to my knowledge" meant that I don't know if one was created. Certainly no one did at my direction. I didn't direct anyone to.

Q. Did you have in mind steps that MBIA would take or that you would seek to take once such a covenant violation occurred?

A. No. I mean, we would have talked with counsel, we would have retained counsel and we

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A. That's my recollection.

Q. This document is dated October 1998, correct?

A. That's correct.

Q. If you turn with me to page 0467?

A. Okay. I am there.

Q. Do you see the subheading, the July '98 bankruptcy?

A. Sure.

Q. Does it appear to you that here someone has written four points that they believe describe what caused the July 1998 bankruptcy?

A. Absolutely. That's exactly what they believed, whoever wrote this believed that.

Q. If you turn to the next page to ACE 0468, here someone at MBIA has summarized the DVOG failure for representatives of Capital Re, correct?

A. That's correct. Number three is the one we were referring to, I see.

Q. Now, by three you are referring to poor financial disclosure, hidden a hundred million loss in fiscal year '97, misclassified

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fact have taken if they had had additional financial information about the financial condition of AHERF and/or its affiliates at an earlier point in time?

A. That would have been true speculation. The answer is no. Couldn't know that.

Q. Do you know what in fact would have been the effect if any of any steps that any trustees of AHERF and/or its affiliates could have taken?

A. Yes. I think if they had known the facts they could have taken steps that -- I can postulate steps that other hospitals have taken that would have avoided this crisis. I can postulate them very easily.

They should have more quickly cut costs and discontinued the physician acquisition. They should have known what their cash position was and very, very quickly made modifications.

They should have very quickly brought in people to run their accounts receivable. They should have very, very quickly looked at the cost structure of the administration both

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determine the scope of the Hunter Group's retention?

A. Because we didn't have the power to force the Hunter Group on the folks because the statement's misstated and didn't tell us that we had the default right under the documents. We didn't know that we had less than one coverage.

If we had known that we would have had the leverage or would have applied the leverage to have gotten the Hunter Group in there, or would have attempted to apply the leverage.

Q. If MBIA didn't have veto power over selection of a consultant, if a consultant was purely up to selection of AHERF, by leveraged you mean the threat of acceleration?

A. Absolutely.

Q. Do you mean to imply anything else?

A. Well, I think that if the financial statements had been correct, the board would have been more listening to people as to what was going on at the hospital.

The board of trustees, whether they did it by negligence or misconduct or anything else, whatever the reason was, they did not have

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east and west. They could have done fifty things if not a hundred things if they had had the proper information and had acted on that proper information. Yes is the answer.

Q. But you have no personal knowledge about that, you are just going by your experience?

A. In similar situations, that's right. I am using the experience of MBIA having insured lots of hospitals and seen lots of hospitals have financial difficulties in the period of '99, 2000, 2001, and survive, easily.

Q. Do you recall MBIA advocating any of the steps that you just listed that the AHERF trustees could have pursued?

A. Absolutely, I am sure. Was I in those conversations? No. But that was the exact purpose of having the Hunter Group in and giving them an unlimited right to look at things. That's exactly what the Hunter Group did when it came into situations, that's exactly what we were asking for.

Q. That's exactly what didn't happen here, correct, because MBIA couldn't in any way

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adequate information upon which to oversight the hospital's operations.

The information they had was wrong. It was faulty. I am not saying it is fraudulent because I don't know that. But I do know that PricewaterhouseCoopers determined that it was wrong and faulty and issued new statements.

Q. Move to strike.

What other leverage did MBIA have other than the threat of acceleration?

MR. WITTEN: Objection. We have been through this for hours.

MS. SPRINGER: Asked and answered.

MR. WITTEN: But go ahead, answer it again.

A. I will answer. We could have gone to the newspapers which we have done in other circumstances. We could have gone to the governor. We could have -- we could have done lots of things that we have done in other situations.

Q. Okay. With respect to going to the newspapers, isn't it the case that your letter was released by MBIA to newspapers to in part

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2 apply pressure to the AHERF board?

3 A. Yes.

4 Q. So that a bankruptcy filing could be  
5 avoided?6 A. Absolutely. The problem was -- what  
7 was the date of that letter? Let's examine that  
8 for a second. It is my recollection that that  
9 date is June of 1998. If the information that I  
10 am talking about had been available in February  
11 of 1997, the situation would have been totally  
12 different. You would not have been that close  
13 to bankruptcy then.14 The events that occurred between the  
15 misstatements and June of 1998 could have been  
16 alleviated, could have been ameliorated by  
17 events that could have taken place.18 Q. February 1997 is in what was AHERF's  
19 fiscal year 1997, correct?20 A. I think it is -- aren't those the  
21 '96 -- weren't the '97 financials delivered --  
22 '96 financials delivered in '97?23 Q. I can actually represent to you that  
24 they weren't delivered in calendar '97. The  
25 audited fiscal year 1996 statements for AHERF

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2 it was way too late. But let me tell you what  
3 we did in other circumstances so you can  
4 understand what you really can do in the real  
5 world.6 If we had known about this in a timely  
7 fashion, in other situations we were able to get  
8 statutes passed in Congress that allowed people  
9 to get a tax ruling that they needed. We  
10 lobbied state senators to change the  
11 reimbursement program -- excuse me, yes, United  
12 States senators to reimburse -- for  
13 reimbursement programs.14 And I am not saying that any of these  
15 things would necessarily have been done in this  
16 setting, but they were all cut off. All those  
17 alternatives were cut off because the  
18 information wasn't available.19 Q. The information wasn't available even  
20 though the DVOG was an 8B credit as of February  
21 1998?

22 A. It defaulted in June of 1998.

23 Q. Correct. But if I am understanding  
24 your testimony correctly, you are saying in  
25 February 1998 when it was an 8B credit, MBIA

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2 were not delivered to MBIA in calendar '97.

3 MR. WITTEN: Well, we have seen a  
4 document already that shows that the '96s were  
5 delivered in November of 1997.

6 MR. KRUSKO: Correct.

7 MR. WITTEN: To MBIA.

8 MR. KRUSKO: Yes.

9 MR. WITTEN: Okay.

10 MR. KRUSKO: That's all I wanted to  
11 establish.12 Q. I just wanted to establish that it  
13 seems to me you are talking about two different  
14 fiscal years. In other words --15 A. I am talking about two different  
16 fiscal years, you are absolutely correct. You  
17 are absolutely correct.18 Q. That's important because there are  
19 different allegations about each fiscal year?

20 A. Fine, that's fair.

21 Q. With respect to going to the  
22 government, meaning the mayor of Philadelphia  
23 and/or the government of Pennsylvania that's  
24 something that MBIA did as well, correct?

25 A. No, we didn't -- well, we did it but

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2 didn't have enough information to act upon?

3 A. That's correct. It didn't even know  
4 it had a default, and I am not convinced that we  
5 didn't have a default sooner than that. I don't  
6 know that. I mean, your point is well taken, I  
7 don't know what -- I would have to study the  
8 financial statements and allegations and the  
9 restated financial statements. But certainly  
10 the restated financial statements would have  
11 been delivered in a more -- if they had been  
12 delivered in a timely fashion correctly -- the  
13 '96 financial statements were for the period  
14 that ended June 30, 1996, is that correct?

15 Q. Correct.

16 A. I just heard that they were delivered  
17 in November of 1997.

18 MR. WITTEN: 1996.

19 A. In November of 1996. If -- I'm sorry,  
20 that's what I thought. I'm sorry. The reason  
21 February was when we wrote -- we downgraded,  
22 that's what I thought. Thank you. I knew the  
23 facts were wrong. I knew you stated it wrong.24 MR. WITTEN: I meant to say earlier  
25 November of '96.

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MR. KRUSKO: I thought he did, actually, but be that as it may.

MS. SPRINGER: I think it was confusing between what you said and --

A. The fact is, if that information had been available to us and was correct in '97, whether it was late '96 or early 1997, and we knew that we had a more difficult problem or even a breach, lots of things could have happened before money was expended.

Q. So, for example, if the DVOG had violated the asset transfer test in fiscal year 1996, MBIA would have had certain rights and responsibilities that you are saying it would have pursued to the fullest degree?

A. I am going to sound weak. Pursued to the fullest degree, we would have pursued. I don't know what the fullest degree means. I am not going to pretend that I know what the fullest degree means. We would have pursued.

If the debt coverage test had broken one, we knew about it in '97, we would have had more power, more ability to cause the board to look at costs, to cause Hunter to be inserted,

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it, yes.

Q. Perhaps just a little unclear. What I am asking is whether anyone at MBIA has ever represented to you that had MBIA's standard asset transfer test been adopted, that DVOG would have violated the test in fiscal year 1996?

A. I don't know what you are talking about when you say standard. You mean put in the documents when originally done?

Q. Yes.

A. I'm sorry. We never look at things that way. The answer is I don't know what we would have done. I am only arguing, just so you understand my point -- I got to repeat my point.

The only thing that you worry about after the deal is done is what the deal itself says. There is no value in anyone spending time, although I am sure they do, worrying about a provision that you wish you would have had.

I am not saying you can't find someone who said that. You probably can. But it is useless.

Q. Do you know what MBIA would have done

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to do all kinds of things, obviously always with the threat of causing there to be an acceleration.

But that's exactly what happens in the real world in these situations, is that you don't go to the -- to use your word, to the absolute extent that you could go to. You don't do that. That isn't how this works. You work with people, but you have to have the right to assert things, and we didn't know we had the right, because the financial statements that were given to us turned out to be, at least according to Coopers & Lybrand, incorrect because they restated them.

Q. Has anyone at MBIA ever communicated to you that had the asset transfer test met MBIA's standard underwriting guideline, that the DVOG would have violated the test in fiscal year 1996?

A. I can only look at the documents themselves. I'm sorry, are you asking if they had violated the test that was in DVOG?

Q. Correct.

A. I don't know -- we would have pursued

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had the DVOG violated the asset transfer test in fiscal year 1996?

A. The one that was in the documents?

Q. Yes.

A. I do not know exactly what we would have done, but we would have asserted that they shouldn't do it any more. We would have worked our darn heart out to get them to make the changes in their administration of that hospital so that they weren't wasting money. We would have argued that Hunter should have been brought in. We would have argued a hundred things. We didn't have the power to do that because we didn't have the information. By the way, the board didn't have it either.

Q. You keep saying that the board didn't have it. Have you ever undertaken any review of what information was available to the AHERF board at specific points in time?

A. No. But I do know that a board has available to it financial statements that are delivered to it by an auditing firm. That's what it has available to it, and they didn't have correct financial statements, it turned

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Did I hear them directly? The answer is no.

Q. So since the time Mr. Stevens has left MBIA, you have never heard him express any statement about MBIA?

A. I have never personally heard him express any statement about MBIA, that is correct.

Q. That's all the questions I have.

MR. WITTEN: I have nothing further.

THE VIDEOGRAPHER: This concludes the videotape deposition of Richard Weill at 4:28 p.m. on June 15, 2004. This is the end tape No. 4.

\_\_\_\_\_  
RICHARD WEILL

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2004.

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RICHARD WEILL

STATE OF NEW YORK ) Pg of Pgs  
) ss.:

COUNTY OF NEW YORK )

I wish to make the following changes, for the following reasons:

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RICHARD WEILL

C E R T I F I C A T E

STATE OF NEW YORK )

) ss.

COUNTY OF NEW YORK )

I, BRANDON RAINOFF, a Federal  
Certified Realtime Reporter and Notary Public  
within and for the State of New York, do hereby  
certify:

That RICHARD WEILL, the witness whose  
deposition is hereinbefore set forth, was duly  
sworn by me and that such deposition is a true  
record of the testimony given by the witness.

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
BRANDON RAINOFF, FCRR, CM

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RICHARD WEILL

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**Wicker Dep.**

**In The Matter Of:**

***AHERF v.  
PRICEWATERHOUSECOOPERS, L.L.P.***

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***MARSHA WICKER***  
***February 25, 2004***

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***LEGALINK MANHATTAN***  
***420 Lexington Avenue - Suite 2108***  
***New York, NY 10170***  
***PH: 212-557-7400 / FAX: 212-692-9171***

**WICKER, MARSHA**



MARSHA WICKER

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1 side the PNC waiver issue?

2 A. We were negotiating with them. Our attorney

3 advised us that some of the things that they

4 were supposed to have sent as part of the new

5 loan agreement had not been provided despite,

6 you know, a couple of follow-ups from her.

7 Q. Did you or anyone else on Mellon's behalf

8 contact AHERF with the intention of perhaps

9 eliciting AHERF's help in getting an agreement

10 with PNC?

11 A. I know I reviewed PNC's proposed language with

12 Mike Martin and explained to him what our

13 objections were.

14 Q. And did Mr. Martin tell you that he would relay

15 your concerns to PNC, or did you understand at

16 the time that that would take place?

17 A. Yeah, you know, we could relay our concerns to

18 PNC ourselves, but we wanted him to be aware

19 of, you know, what our objection was to the

20 language that we were negotiating with PNC.

21 Q. Did Mr. Martin say anything to you in the

22 course of this conversation, if you recall?

23 A. He told me that he understood what our

24 objections were.

25 Q. Is that to say that Mr. Martin told you he

Page 219

1 sympathized with Mellon's position or he simply

2 understood the points that you were making?

3 A. Well, I mean he said the words to me I

4 understand your objections. Was he

5 sympathetic, I don't know.

6 Q. Do you know whether anyone at First Chicago

7 ever talked or met with anyone at PNC to try to

8 reach agreement with PNC on a waiver?

9 A. I'm not aware of any of those conversations.

10 Q. And aside from this one conversation with

11 Mr. Martin, are you aware of anyone at AHERF

12 having a meeting or a conversation with PNC to

13 try to get PNC to agree to the terms of the

14 waiver apart from just general recollections?

15 A. I don't know all of the conversations that went

16 on between PNC and AHERF.

17 Q. I understand from your prior testimony that you

18 believe you first learned that AHERF intended

19 to pay off the Mellon line of credit in full

20 during a four-way conversation that you

21 participated in with Mike Martin, Rich McKeown

22 and Mr. or Ms. Shurlow?

23 A. Nancy Shurlow.

24 Q. Shurlow. Do you recall what Nancy's -- excuse

25 me, what Nancy Shurlow's position was in this

Page 220

1 general time frame, April 1998?

2 A. She's an attorney with Reed Smith Shaw &

3 McClay.

4 Q. What, if anything, do you recall about that

5 conversation other than what I've relayed to

6 you based on my reading of your prior

7 testimony?

8 A. They told us that they were going to pay us

9 off. We had called them -- I'm trying to

10 remember when we called them. We had initiated

11 a phone conversation to begin the process of

12 taking collateral, identifying the assets that

13 would be pledged as collateral and walking

14 through the information that Nancy would need

15 to prepare the forms, and we were advised that

16 they intended to pay us off.

17 Q. By prepare forms, I take it you mean prepare

18 the necessary documentation for a restructured

19 loan?

20 A. No, for liens.

21 Q. And this is some sort of springing lien in the

22 favor of Mellon and/or First Chicago?

23 A. No, I don't recall the specifics of that

24 particular transaction, but whatever the

25 appropriate collateral form was, we would have

Page 221

1 discussed that.

2 Q. So in short, this discussion was to identify

3 and put in place a process by which the Mellon

4 line of credit would be collateralized?

5 A. That's right.

6 Q. By this point in time, had AHERF agreed to the

7 collateralization that you discussed in this

8 conversation, or were negotiations still

9 ongoing?

10 A. We were -- we were still negotiating the loan,

11 and putting this in place was one more step of

12 that loan.

13 Q. Were these negotiations in any way related to

14 the granting of a waiver for the continuing

15 violation of the DVOG?

16 A. Well, condition precedent of that loan would

17 have been that all -- all other loan violations

18 would have been cured, so that would be, you

19 know, not a specific part of it but, you know,

20 to make one of the conditions precedent occur.

21 Q. Just to be clear, you said all other. I just

22 want to be perfectly clear that I understand

23 you. You mean all other aside from the

24 violation of the DVOG, or do you mean all

25 violations?

56 (Pages 218 to 221)



MARSHA WICKER

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1 A. As I recall that credit agreement, and, again,  
 2 I don't have it in front of me, but one of the  
 3 conditions precedent was that they had no  
 4 outstanding loan violations. I'm paraphrasing  
 5 but --  
 6 Q. Sure.  
 7 A. -- that was the sense of it.  
 8 Q. AHERF could have paid off a certain percentage  
 9 of the amount then outstanding on the Mellon  
 10 line of credit, and in so doing have brought  
 11 the DVOG into compliance with the liquidity  
 12 ratio; correct?  
 13 A. Yes.  
 14 Q. So I take it then full repayment was not  
 15 necessary to achieve compliance with the terms  
 16 of the line of credit?  
 17 A. I don't believe so.  
 18 Q. With that background in mind, did you have an  
 19 understanding at the time as to why AHERF was  
 20 paying the line of credit off in full?  
 21 A. We were surprised. We didn't understand why.  
 22 Q. I take it you didn't understand why because in  
 23 your view it didn't make good business sense  
 24 for AHERF to pay off the line in full?  
 25 A. I wouldn't say that. I would say we were

Page 223

1 surprised because Nancy and I called with the  
 2 idea of continuing the negotiations on the  
 3 credit agreement, and this notion of paying us  
 4 off just came out of the blue.  
 5 Q. And did you ask Mr. Martin or Mr. McKeown what  
 6 prompted this idea that the loan would be paid  
 7 off in full?  
 8 A. No. I think we just -- they said they were  
 9 going to pay us off, and we accepted that at  
 10 face value.  
 11 Q. Is it your recollection that the repayment from  
 12 AHERF to Mellon occurred on April 27th, 1998?  
 13 A. You know, after all these years, I don't -- I  
 14 can't believe that I don't remember that  
 15 specific date, but whatever the date was.  
 16 Q. Let me mark this if I can Exhibit 2152 -- 2452.  
 17 -----  
 18 (Exhibit 2452 marked for identification.)  
 19 -----  
 20 Q. For the record, I would note that Exhibit 2452  
 21 is Bates numbered FC 000048 through 49.  
 22 Ms. Wicker, do you recognize the  
 23 handwriting on page 2 of Exhibit 2452?  
 24 A. Yeah, it's my secretary, my secretary at the  
 25 time's handwriting.

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1 Q. Your secretary being Reggie, which I take it is  
 2 short for Regina?  
 3 A. Yes.  
 4 Q. Does it appear to you then that Exhibit 2452 is  
 5 a fax you directed her to send to the other  
 6 members of the loan syndicate alerting them to  
 7 the fact that AHERF was announcing repayment of  
 8 the loan in full on April 27th, 1998?  
 9 A. Yes.  
 10 Q. With this background in mind, are you able to  
 11 place in time when this conversation with  
 12 Mr. Martin and Mr. McKeown took place?  
 13 A. A couple of days before the 27th, but I  
 14 couldn't be more specific than that.  
 15 Q. Ms. Wicker, let me show you two documents that  
 16 we've previously marked as Exhibits 1933 and  
 17 1934.  
 18 Ms. Wicker, do you recognize Exhibit  
 19 1933 as a letter from Toronto Dominion to  
 20 Mellon Bank dated April 27th, 1998?  
 21 A. Yes.  
 22 Q. By this letter Toronto Dominion, as reflected  
 23 in the fourth paragraph, requests that Mellon  
 24 convene a meeting of the lenders during the  
 25 week of April 27th to discuss and vote upon

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1 acceleration of the loans; correct?  
 2 A. That's what it says.  
 3 Q. And in that passage, Mr. Maloney makes clear  
 4 that Toronto Dominion intended to vote in favor  
 5 of acceleration; correct?  
 6 A. Yes.  
 7 Q. And to be more specific, he also advises Mellon  
 8 that he has been told that Bank One will also  
 9 vote in favor of acceleration; is that correct?  
 10 A. He does say that.  
 11 Q. And do you recognize Exhibit 1934 as being a  
 12 virtually identical letter directed to Mellon  
 13 from Bank One containing much of the same  
 14 information?  
 15 A. I do.  
 16 Q. In your view did AHERF know about Toronto  
 17 Dominion's and Bank One's position in favor of  
 18 acceleration at any point in time before it  
 19 made the decision to repay the loan in full?  
 20 A. I don't believe so.  
 21 Q. Prior to the actual fact of repayment on the  
 22 27th of April, had Mellon ever given any  
 23 indication to AHERF that acceleration of the  
 24 loan was either being discussed or was  
 25 imminent?

57 (Pages 222 to 225)

MARSHA WICKER

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1 A. No.  
 2 Q. Do you recall being contacted by David Cook  
 3 with PNC on the date of the repayment?  
 4 A. I don't recall if it was exactly on the date of  
 5 repayment, but certainly within a day or so of  
 6 that -- of that time frame.  
 7 Q. Within a day or two after the repayment?  
 8 A. You know, I don't -- I can't be -- it may have  
 9 been a day forward, a day after, but it was  
 10 very close.  
 11 Q. Is it your recollection that during this  
 12 conversation Mr. Cook asked you that Mellon not  
 13 accept the full repayment being made by AHERF?  
 14 A. Yes.  
 15 Q. Did Mr. Cook give any reasons why he wanted  
 16 Mellon to reject the full repayment?  
 17 A. He said that AHERF was going to pay us back but  
 18 they weren't very happy about it and we should  
 19 not accept it.  
 20 Q. And I take it PNC Bank was not happy about it  
 21 because it resulted in a drain of liquidity  
 22 from the AHERF system?  
 23 A. Well, you'd have to ask PNC what their point of  
 24 view was.  
 25 Q. Did you ask Mr. Cook what his point of view was

Page 227

1 beyond what you just relayed?  
 2 A. No. I told him that I would confer with my  
 3 superiors and see what did we think about not  
 4 accepting the payment.  
 5 Q. I take it you just didn't feel comfortable  
 6 making a representation to Mr. Cook on behalf  
 7 of Mellon Bank at that point in time?  
 8 A. That's right.  
 9 Q. My understanding is at some point shortly  
 10 thereafter you went before Mellon's credit  
 11 committee and relayed Mr. Cook's request; is  
 12 that correct?  
 13 A. That's right.  
 14 Q. And beyond the simple fact of relaying  
 15 Mr. Cook's request, did you provide the  
 16 committee with a recommendation?  
 17 A. As I recall, my words were PNC has called us  
 18 and told us that AHERF is going to pay us back,  
 19 but they are unhappy about it and we shouldn't  
 20 accept the payment. I told them I would ask  
 21 you what you think. Do we think we should not  
 22 accept the payment, and they said we should  
 23 accept the payment.  
 24 I mean I'm paraphrasing. I'm not --  
 25 those aren't my exact words, but they certainly

Page 228

1 convey the message.  
 2 Q. Following the repayment, did you have any  
 3 conversations that you recall with Mr. Taucher,  
 4 Mr. Cook or anyone else at PNC about the  
 5 repayment itself?  
 6 A. After the payment, I don't recall having any.  
 7 Q. After the repayment, do you recall hearing that  
 8 someone else at Mellon had had a conversation  
 9 with someone at PNC about the repayment?  
 10 A. I don't recall that.  
 11 Q. Did you relay this conversation with Mr. Cook  
 12 to anyone at AHERF at any point in time?  
 13 A. I don't believe so.  
 14 Q. Did you relay this conversation to anyone at  
 15 First Chicago at any point in time?  
 16 A. Conversation with Mr. Cook, I don't recall  
 17 specifically.  
 18 Q. Were you concerned after the repayment had been  
 19 made that there would be less collateral that  
 20 AHERF could use to go back into the market and  
 21 obtain another loan either from Mellon or  
 22 another lender?  
 23 A. We believed that there would be sufficient  
 24 liquid assets remaining at the parent level to  
 25 support the company's ability to get another

Page 229

1 loan.  
 2 Q. I take it then you continued negotiating with  
 3 AHERF about the possibility of obtaining an  
 4 additional loan?  
 5 A. No. We believed that because they had repaid  
 6 us that they did not want to continue  
 7 negotiations on receiving a new loan.  
 8 Q. Even if the terms and conditions were  
 9 different?  
 10 A. They never asked us about that.  
 11 Q. Okay.  
 12 A. When we followed up to continue the process of  
 13 obtaining the collateral, they didn't  
 14 participate in that. They simply told us that  
 15 they were going to pay us off, and you know, we  
 16 believed that their desire for a new loan was  
 17 off the table.  
 18 Q. Do you recall you yourself contacting AHERF to  
 19 confirm that fact or directing anyone else to  
 20 contact AHERF to confirm that fact?  
 21 A. To confirm the fact that they did not --  
 22 Q. They weren't interested in the possibility of  
 23 another loan through Mellon.  
 24 A. I did not contact them, and I'm not aware that  
 25 anyone else did.

58 (Pages 226 to 229)

MARSHA WICKER

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1 COMMONWEALTH OF PENNSYLVANIA ) CERTIFICATE  
 2 COUNTY OF ALLEGHENY ) SS:

3 I, Heidi H. Willis, RPR, CRR, a Court Reporter  
 4 and Notary Public in and for the Commonwealth of  
 5 Pennsylvania, do hereby certify that the witness,  
 6 MARSHA WICKER, was by me first duly sworn to testify  
 7 to the truth; that the foregoing deposition was taken  
 8 at the time and place stated herein; and that the  
 9 said deposition was recorded stenographically by me  
 10 and then reduced to printing under my direction, and  
 11 constitutes a true record of the testimony given by  
 12 said witness.

13 I further certify that the inspection, reading  
 14 and signing of said deposition were NOT waived by  
 15 counsel for the respective parties and by the  
 16 witness.

17 I further certify that I am not a relative or  
 18 employee of any of the parties, or a relative or  
 19 employee of either counsel, and that I am in no way  
 20 interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
 22 and affixed my seal of office this 26th day of  
 23 February, 2004.

24 \_\_\_\_\_  
 25 Notary Public

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1 COMMONWEALTH OF PENNSYLVANIA ) E R R A T A  
 2 COUNTY OF ALLEGHENY ) S H E E T

3 I, Marsha Wicker, have read the foregoing pages  
 4 of my deposition given on Wednesday, February 25,  
 5 2004, and wish to make the following, if any,  
 6 amendments, additions, deletions or corrections:  
 7 Page/Line Should Read Reason for Change  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19

20 In all other respects, the transcript is true and  
 21 correct.

22 \_\_\_\_\_  
 23 MARSHA WICKER

24 Subscribed and sworn to before me this  
 25 \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
 Notary Public  
 AKF Reference No. HW79593

67 (Pages 262 to 263)

**Williamson Dep.**



**In The Matter Of:**

***AHERF v.  
PRICEWATERHOUSECOOPERS***

---

**WALTER WILLIAMSON**

***June 23, 2004***

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